

stating any basis whatsoever in support of such a finding. This is contrary to MPEP § 816

which states:

MPEP § 816

The particular reasons relied on by the Examiner for holding the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given . . .

In the absence of an enunciated basis, it is respectfully submitted that the PTO clearly has not carried forward its burden of proof to establish distinctness.

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Secondly, MPEP § 806.04(f) requires:

MPEP § 806.04(f)

Claims to be restricted to different species must be mutually exclusive . . .

The outstanding Official Action fails to address in any way whether the pending claims recite mutually exclusive characteristics and this failure provides a further basis for traversing the Election Requirement.

Finally, MPEP § 803 states:

MPEP § 803

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

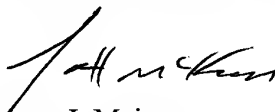
The claims of the present invention would appear to be part of an overlapping search area. Accordingly, Applicant respectfully traverses the outstanding Election Requirement on the grounds that a search and examination of the entire application would not place a *serious* burden on the Examiner.

In this particular case, since Applicant is at a loss as to the basis of the Election Requirement, in view of the fact that the Requirement does not state any analysis on how the species were decided, Applicant respectfully requests that the Requirement be withdrawn, or at the very least, that a new Official Action be mailed stating the basis for the Election

Requirement and remedying the deficiencies above-noted, so that Applicant can then appropriately respond on the merits of the Requirement.

Respectfully submitted,

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